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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,524	09/08/2003	Daryl S. Mcredith	TN-3481	9167
7590	09/07/2006		EXAMINER	
Adan Ayala, Esq. Black & Decker Inc. TW-199 701 E. Joppa Road Towson, MD 21286			DEXTER, CLARK F.	
			ART UNIT	PAPER NUMBER
			3724	
DATE MAILED: 09/07/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/657,524	MEREDITH, DARYL S.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Clark F. Dexter	3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 June 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 and 17 is/are pending in the application.
- 4a) Of the above claim(s) 2-5 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,6-9 and 17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/21/06</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

1. The response filed on June 23, 2006 has been entered.

***Information Disclosure Statement***

2. The information disclosure statement filed on July 21, 2006 has been received and the references listed thereon have been considered.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by European Publication 0 752 300 (hereafter EP '300).

EP '300 discloses a saw (e.g., see Figs. 1-13 and 21) with every structural limitation of the claimed invention including:

a base (e.g., 12) for supporting a workpiece;

a saw assembly (e.g., see col. 6, line 35 - col. 7, line 1) connected to the base, the saw assembly comprising a pivot arm, an upper blade guard (e.g., 18) connected to the pivot arm, a motor (e.g., 20) attached to the upper blade guard, and a blade (e.g., 16) driven by the motor, the saw assembly being movable between an upper

position for not engaging the workpiece, and a lower position for engaging the workpiece (e.g., by the pivot located immediately below the motor 20 as viewed in Figure 1); and

a fence assembly attached to the base, the fence assembly comprising a fixed fence fixedly (e.g., 48) attached to the base, a movable fence (e.g., 32, 34; or 60) removably connected to the fixed fence (e.g., as shown in Figure 5), the movable fence defining a first support plane, at least one of the fixed fence and the movable fence for contacting the workpiece, and an auxiliary fence (e.g., 80) disposed behind at least one of the fixed fence and the movable fence, the auxiliary fence defining a second support plane substantially parallel to the first support plane, the auxiliary fence contacting the workpiece when the movable fence is removed (e.g., the auxiliary fence 80 is fully capable of contacting a workpiece when the movable fence 32 is removed; and similarly, the auxiliary fence 80 is fully capable of contacting the workpiece when the movable fence 60 is removed).

It is noted that various types of workpieces will meet this claim; for example, an irregular shaped workpiece, a stepped workpiece, a generally L-shaped workpiece or the like, that includes a portion that rests on the workpiece support surface and another portion that extends to contact portion 80. Further, it is noted that component 60 could be pivoted out of the way of the workpiece so that the workpiece may contact surface 80, or it could be removed as suggested in col. 7, lines 31-32. It is emphasized that all of the above-described manipulations, including selection of workpiece configurations, can be performed without modifying the prior art device as disclosed in the prior art

document, and thus are considered to be functional recitations of intended use of the prior art device.

Regarding claims 6-9, as disclosed in EP '300, the fixed fence has a support surface (e.g., at 107) that is substantially parallel to an upper surface of the base, is substantially perpendicular to first support plane; and the fixed fence has a surface (e.g., 63) which is substantially coplanar with the first support plane.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 6-9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sato et al., pn 4,869,142 in view of O'Banion et al., pn 5,297,463 or European Publication 0 752 300 (hereafter EP '300).

Sato discloses a saw (e.g., see Fig. 9) with every structural limitation of the claimed invention including:

a base (e.g., 1) for supporting a workpiece;

a saw assembly connected to the base, the saw assembly comprising a pivot arm (e.g., 14), an upper blade guard (e.g., 26) connected to the pivot arm, a motor (e.g., 16) attached to the upper blade guard, and a blade (e.g., 17) driven by the motor, the

saw assembly being movable between an upper position for not engaging the workpiece, and a lower position for engaging the workpiece; and

a fence assembly (e.g., 3) attached to the base, the fence assembly comprising a fixed fence fixedly (e.g., 48) attached to the base, the fixed fence contacting the workpiece, and an auxiliary fence (e.g., 37) disposed behind the fixed fence (i.e., when adjusted in such a manner), the auxiliary fence defining a second support plane substantially parallel to the first support plane and contacting the workpiece.

Sato lacks a movable fence. However, such movable fences are old and well known in the art and provide various well known benefits including configuring the fence assembly to correspond to a particular work piece and/or cutting operation. O'Banion et al. discloses one example of such a fence assembly configuration. EP '300 discloses another example of such a fence assembly configuration that clearly shows a movable fence (e.g., 32) that is removable. It is noted that claims 6-9 are met by either Sato or Sato modified by the known prior art including O'Banion or EP '300. Therefore, it would have been obvious to one having ordinary skill in the art to provide a movable fence on the fence assembly of Sato (e.g., by replacing fence 3 with a fence assembly such as that disclosed by O'Banion or EP '300) for the well known benefits including those described above.

Regarding claim 17, the distance between the first plane (defined by the movable fence which is the same plane as that defined by the fixed fence) and the second plane (defined by the auxiliary fence) is adjustable and thus is fully capable of being adjusted to the claimed distance.

***Response to Arguments***

7. Applicant's arguments filed June 23, 2006 have been fully considered but they are not persuasive.

In the last paragraph on page 1 of the response, applicant argues:

"Auxiliary fence 80 is attached to fence 32 or 34. Accordingly, when fence 32 or 34 is removed so is auxiliary fence 80. If auxiliary fence 80 is removed, it cannot contact a workpiece."

The Examiner respectfully disagrees with applicant's conclusion. The rejection as applied clearly refers to the removal of one of the fences 32 or 34. There is no suggestion in the rejection for the removal of both fences 32 and 34 to meet the claims. The invention is fully capable of being used with only one of the fences 32, 34 removed. The auxiliary fence 80 (e.g., the rightmost occurrence in Fig. 5 and which is connected to 34) is clearly capable of contacting a workpiece when fence 32 is removed.

In the second paragraph on page 2 of the response, applicant argues that "nothing in EP '300 teaches or suggests that flap 60 is removable." The Examiner respectfully submits that, as pointed out in the rejection, it is implied that flap 60 could be removed in col. 7, lines 31-32 wherein it describes the flap as "optional". This is understood as implying that the invention could be used with the flap 60 removed.

Regarding applicant's arguments in the paragraph bridging pages 2-3 of the response that are directed to the rejection under 35 USC 103, the Examiner respectfully submits that there is no known patent law that disqualifies the subject references,

particularly since the subject references qualify as prior art under 35 USC 102(b), not 102(e).

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark F. Dexter whose telephone number is (571)272-4505. The examiner can normally be reached on Mondays, Tuesdays, Thursdays and Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571)272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Clark F. Dexter  
Primary Examiner  
Art Unit 3724

cfd  
August 28, 2006